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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 622.

RALPH D. ABERNATHY et al.,
Petitioners,

v.

JOHN PATTERSON, Individually and as
Governor of Alabama, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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OPINIONS BELOW.

The order and opinion of the United States District Court of March 17, 1961 (App. B of Petition, pp. 27-29) is unreported. The opinion of the United States Court of Appeals for the Fifth Circuit of October 31, 1961 (App. B of Petition, pp. 15-25), is reported at 295 F. 2d 452.

JURISDICTION.

The judgment of the Court of Appeals was entered on October 31, 1961. Respondents are not advised of the date of filing of the Petition for Writ of Certiorari, but a copy was received by counsel for Respondents on December 22, 1961. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

1. When the only claimed invasion of a person's constitutional rights is that he has been sued for private civil damages in a state court for libel, and judgment has been rendered against him there, do the Civil Rights Acts entitle him to a federal injunction against further prosecution of the libel litigation and to federal district court review of the libel judgment? Or, must he, instead, utilize usual state appellate processes, admittedly adequate to make him whole if his appeal is successful, with review ultimately in the Supreme Court of the United States of any federal question properly preserved and presented?

2. Are libelous utterances within the area of constitutionally protected speech and press? Do the Civil Rights Acts immunize publishers of libels from private state court libel suits by making available to them federal injunctions against such suits?

3. Does a federal suit to enjoin the trial of four pending state private civil libel suits; to review and set aside two judgments in the suits, one pending in the state's highest court; and to block the execution of the judgments, seek a federal injunction prohibited by 28 U. S. C. 2283 and its underlying considerations of federalism?

4. Do the Civil Rights Acts entitle a disappointed state court litigant to a federal court re-trial on general and unsupported allegations of fraud and conspiracy?

STATUTES INVOLVED.

In addition to the anti-injunction statute, 28 U. S. C. 2283, and two sections of the Civil Rights Act, 42 U. S. C. 1983 and 1985 (3) (App. A of Petition, pp. 13-14), there are also involved the following sections of Title 7, Code of Alabama, 1940: 276, 792-794. (These sections are set out in Appendix A of this Brief.)

STATEMENT.

Petitioners seek review because the District Court dismissed their complaint (R. 74-77) and the Court of Appeals affirmed. This complaint of February 20, 1961 asked the District Court to review and enjoin private damage suits for common law libel previously commenced by respondents Sullivan, James, Parks, and Patterson in the state court of Montgomery County, Alabama. The libel actions of Sullivan and James had already been reduced to judgment against petitioners and a codefendant, The New York Times Company. Earlier respondents Sullivan, James, and Parks had filed private suits for libel against The New York Times and these petitioners on April 19, 1960 (and respondent Patterson sometime thereafter) because of the publication and subsequent distribution in Alabama and elsewhere of a paid advertisement in The New York Times of March 29, 1960, on which petitioners' names appeared as endorsers (R. 23).[1] Seeking to invoke the jurisdiction of the District Court under various statutory and constitutional provisions,[2] petitioners asked a

[1] As the Court of Appeals observed (295 F. 2d at 454, n. 1), since the dismissal below, The New York Times has appealed the Sullivan judgment to the Supreme Court of Alabama, thus transferring jurisdiction of that case to the Supreme Court of Alabama; and petitioners, by a paper filed in the state circuit court on April 27, 1961, sought to join in that appeal. (The appeal was argued and submitted in the Supreme Court of Alabama on December 19, 1961.)

The James case is pending in the state trial court on a motion for new trial. The Parks and Patterson cases have been removed to the United States District Court for the Middle District of Alabama, and review has been granted by the Fifth Circuit under 28 U. S. C. 1292 (b) of the District Court's refusal to remand these cases (295 F. 2d at 454, n. 1).

The other respondents are Alabama sheriffs, presumably joined as defendants below because Sullivan had sought to levy execution on his judgment.

[2] 28 U. S. C. 1338 (a); 28 U. S. C. 1343 (3) and (4); 42 U. S. C. 1983 and 1985 (3); Constitution of the United States, Article IV, § 2, and Amendments 13, 14 and 15.

declaration that the Sullivan and James judgments already entered on state jury verdicts were void; attempted to block by injunction the legitimate execution of these judgments which had not been superseded or stayed in accordance with applicable state law;[3] and sought an injunction against the trial of the Parks and Patterson cases insofar as the petitioners were concerned. The complaint, characterized by the District Court as "unduly prolix and contain[ing] much redundant, immaterial, and impertinent matter",[4] was held not to "set out circumstances which would warrant this Court's assuming jurisdiction" (R. 76; App. B of Petition, p. 28). Moreover, the District Court held:

> "It affirmatively appears in this case that the plaintiffs seek to have litigated in this Court matters which are pending in the State Court, with the right to a review of the actions of the State Court ultimately by the Supreme Court of the United States" (R. 76).

The Court of Appeals, upon petitioners' concession that the action in the District Court was not a class action, confined petitioners' claims "to themselves to the exclusion of other Negro citizens" (295 F. 2d at 456).

Considering whether "under the ordinary principles of equity (petitioners) have shown irreparable damage and the absence of a plain, adequate, and complete remedy at law",[5] the Court of Appeals held that since the only facts asserted in support of any claimed exercise of a constitutional right by petitioners concerned the publication of

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[3] Title 7, §§ 792-794, Code of Alabama, 1940.

[4] This observation was clearly designed to cover, *inter alia*, §§ 18-24 of the complaint (R. 7-10) and the 24-page affidavit (R. 32-56) which purported to describe events alleged to have occurred from February 25 to April 9, 1960—a period which ended before the state libel suits were filed; almost six months before the Sullivan trial; almost nine months before the James trial; and almost a year before the filing of the complaint itself.

[5] 295 F. 2d at 456.

the paid advertisement in The New York Times, the constitutional claim depended on whether the state libel trials were fair and whether there were adequate means of review in the Supreme Court of Alabama and ultimately in this Court. The Court of Appeals concluded that petitioners "will suffer no such irreparable damage as would justify injunctive relief, and that they have a plain, adequate and complete remedy at law" (295 F. 2d at 458).

Accordingly, the Court of Appeals also held that "it is both unnecessary and inappropriate for us to decide such delicate and important questions of federalism as might . . . be presented by the application of the anti-injunction statute, 28 U. S. C. A., § 2283, and its related judicial rule of comity" (295 F. 2d at 456).

Without alleging any facts which under the most generous construction related any details of the libel actions, much less defenses to them,[6] the complaint characterized these state libel suits arising out of The Times advertisement said to have been inserted by "supporters" of petitioners to solicit for them and Martin Luther King, Jr. (R. 10-11), as "fraudulent actions" and "without any basis in law or fact" (R. 11), and brought by respondents Patterson, Sullivan, James, and Parks in their "governmental capacity" (R. 16) to "enrich them" (R. 15).[7] The judgments in the Sullivan and James cases are called "fraudulent" (R. 11); and it is said that the verdicts "are an unconstitutional usurpation of judicial machinery

[6] Not even the pleadings in the state action are attached or described; none of the testimony is discussed, even in the most general way; no theories of liability or defense are mentioned.

[7] Sullivan, James and Parks, municipal officers, had to sue privately for damages. A city, as a municipal corporation, has no standing to sue for libel. *City of Chicago v. Chicago Tribune Co.*, 307 Ill. 395, 139 N. E. 86, 28 A. L. R. 1368; *City of Albany v. Meyer*, 99 Cal. App. 651, 279 P. 213; *Mayor of Manchester v. Williams* (1891), 1 Q. B. 94. *A fortiori* the State of Alabama has no standing, and Patterson's suit is also private.

(by respondents)" (R. 16). These judgments are termed "null and void" on the following grounds, which carefully avoid the merits of the state court actions: (a) the suits "punished" petitioners in the "exercise of their right to comment"; (b) during a portion of the James case, courtroom spectators were segregated (R. 13);[8] (c) celebrations of the Civil War Centennial in Montgomery in 1961 created a prejudicial atmosphere (presumably for the James trial, since the Sullivan trial had already concluded), and produced verdicts which "could only have been the result of the passionate (sic) prejudice revived by the celebration and other events embraced within the Civil War, among others" (R. 15); and (d) the verdicts were without support in evidence (R. 15).[9]

The complaint contains not a hint that these matters, except for spectator seating in the James case, were presented in the state trial court or that motions for a continuance or change of venue were sought. Nowhere in the complaint or the petition here is there the slightest suggestion that in either the Sullivan or James trials, these petitioners, or indeed The New York Times, even attempted to introduce any testimony to substantiate the truth of the matters contained in the paid advertisement.

Belatedly, in the appellate courts, petitioners have tried to characterize their complaint as something more than an attempt to seek judicial review of pending state libel actions in a federal District Court. While the petition talks

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[8] The petition (p. 4) inaccurately states that the complaint charged courtroom segregation in the Sullivan case. It did not; its allegation concerned only part of the James case (R. 13 and 24-29).

[9] The petition here (footnote *p. 4) refers to a District Court opinion on denial of a motion to remand the Parks and Patterson cases. This opinion was not part of the record in the Court of Appeals, and is incorrectly said to have been. However, the Court of Appeals has permitted interlocutory review of it under 28 U. S. C. 1292 (b). 295 F. 2d at 454, n. 1.

in vague and amorphous terms about the denial of petitioners' constitutional rights by respondents, the complaint, as painstakingly analyzed in the opinion of the Court of Appeals, and indeed the petition itself, reveal no overt acts relating to petitioners other than the libel suits.

All allegations of irreparable damage relate to the libel suits (295 F. 2d at 454). The only averment as to the adequacy of legal remedy concerns the libel actions and their trial (295 F. 2d at 454). The entire prayer for relief seeks to enjoin the enforcement of libel judgments obtained; to enjoin the trial of the libel actions still untried; to obtain a declaration that the two judgments already entered are null and void; and to restrain, *pendente lite*, the execution of judgments and the trial of pending actions.[10]

The complaint, itself, which was filed on February 20, 1961, and the motion for preliminary injunction filed on March 1, 1961 (R. 59), followed by almost a year or more any of the events described in the complaint and the attached affidavit. Except for the institution of the libel actions, and with the limited exception of the Abernathy march of March 6, 1960, there are no allegations in the complaint or in the attached affidavit that any respondent committed any overt act relating to any of the petitioners.

Petitioners concede that this is not a class action. And no person involved in the allegations of events which the

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[10] While par. 1 (c) of the prayer for relief is couched in general terms and asks that the respondents be restrained from denying petitioners' rights guaranteed by the 1st and 14th Amendments, as the Court of Appeals pointed out, the only averment in the complaint remotely relating to the exercise of such rights by these petitioners, as distinguished from others not parties to the suit, concerns the publication of the paid advertisement in The New York Times. While Petitioner Abernathy is said to have been deterred from marching on the State Capitol in the company of 1,000 others on March 6, 1960 (R. 8-9), this event antedated the filing of the complaint by almost a year (R. 1) and involved no other petitioner and no respondent except Sullivan.

District Court characterized as "unduly prolix and contain[ing] much redundant, immaterial, and impertinent matter," is a party to this case.

Two of the petitioners do not reside in Montgomery (R. 2); three of the sheriffs reside in counties of Alabama other than Montgomery (R. 3); and one of the respondents is the Governor of the State.

To state the case and its purpose is to expose immediately its unique and preposterous nature. It seeks to obtain federal District Court review of two state judgments, one now pending in the Supreme Court of Alabama, and to enjoin the orderly progress of common law libel actions in state courts. It seeks all of this when the only averred act against the petitioners is the libel litigation which may be fully and adequately reviewed in established appellate channels. The complaint strikes, moreover, at the vitals of the historically delicate accommodation of state and federal judicial systems, all in violation of the prohibition which Congress imposed by 28 U. S. C. 2283.

ARGUMENT.

The Court of Appeals correctly affirmed the dismissal of this complaint by the District Court. It was perfectly clear to those Courts, as it will be to this Court, that this case is no more novel or complicated than the postulate that cases begun in state courts must be allowed to pass through appellate processes, free from federal interference, with review ultimately in this Court of any federal question properly preserved and presented. The simple and sole question is whether a federal court may enjoin state damage suits for libel already commenced—one case having been submitted in the state Supreme Court for decision and another pending on motion for a new trial. What these petitioners sought in their complaint was to take the judgments of the Alabama trial court for review, not to the Supreme Court of Alabama, but to the federal District Court.

There is no conflict of decisions; the questions raised by the petitioner are not of general importance, but are easily answered by these long-settled axioms.

1. The Court of Appeals searched the complaint in vain for any averment of any overt act of any respondent which was said to have deprived any petitioner of any asserted constitutional right, other than the assertion that private libel suits had been commenced, had been reduced to judgment in two instances, and were being collected. All allegations of irreparable damage related to the libel suits, as did the only averment as to the adequacy of legal remedy. The entire prayer for relief concerned the libel judgment. This Court's search of the record and petition for anything else will be equally fruitless.[11]

[11] Of course, the Court of Appeals correctly observed that a "sweeping conclusion cannot be accepted unless it is well supported by specific factual averments" (295 F. 2d at 457). This Court said the same thing in *Ellis v. Dixon*, 340 U. S. 488, 462: "What has

But libelous utterances, as this Court has repeatedly held, are not within the area of constitutionally protected speech and press.[12] Moreover, free speech and press guaranties do not extend to commercial advertising.[13]

Thus, the only alleged controversy between petitioners and respondents involves the questions of whether petitioners had fair trials of the libel actions and whether they have adequate means of appellate review. The Court of Appeals correctly held that these matters go from the Alabama trial court to the Supreme Court of Alabama. Petitioners have conceded (Petition p. 8) that the Alabama decisions cited by the Court of Appeals (295 F. 2d at 457) permit petitioners to be made whole, with interest, if their appellate review is successful. Moreover, the Court of Appeals correctly pointed out that Alabama does not require supersedeas as a prerequisite for appeal.

It is spurious for petitioners to cite **Hague v. C. I. O.**, 307 U. S. 496, as involving allegations "similar to those" contained in the complaint at bar. There the plaintiffs spelled out numerous overt acts of the defendants directed specifically to the plaintiffs themselves, and in many instances undertaken pursuant to a city ordinance held to be unconstitutional. No specification of any such acts, other than the commencement of the libel suits, appears in this complaint.

This Court has recently said that it would not be moved to extraordinary injunctive action where the movants,

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been alleged is entirely too amorphous to permit adjudication of the constitutional issues asserted."

[12] *Roth v. U. S.*, 354 U. S. 476, 483; *Beauharnais v. Illinois*, 343 U. S. 250, 256; *Chaplinsky v. New Hampshire*, 315 U. S. 568, 571-572; *Konigsberg v. State Bar of California*, 366 U. S. 36, 50; *Near v. Minnesota*, 283 U. S. 697, 715.

[13] *Valentine v. Chrestensen*, 316 U. S. 52, 54; *Breard v. City of Alexandria*, 341 U. S. 622, 642; *Pollak v. Public Utilities Commission*, 191 F. 2d 450, 457 (D. C. Cir. 1951); *Drew and Co. v. F. T. C.*, 235 F. 2d 735, 739-740 (2d Cir. 1956).

themselves, were not involved in the state acts said to be unconstitutional. **Bailey v. Patterson**, 30 U. S. L. Week 3201, decided December 12, 1961.

And this Court reiterated in **Poe v. Ullman**, 367 U. S. 497, 6 L. Ed. 2d at 996, that constitutional questions are decided within the framework of an adjudicatory process "exercised under the impact of a lively conflict between antagonistic demands, actively pressed, which make resolution of the controverted issue a practical necessity."

2. The Court of Appeals, having found that petitioners stated no claim which entitled them to the injunctive relief sought, did not decide the "delicate and important questions of federalism as might . . . be presented by the application of the anti-injunction statute, 28 U. S. C. A., § 2283, and its related judicial rule of comity." (295 F. 2d at 456.) *Had the Court of Appeals gone this far*, it would undoubtedly have found that the relief sought was clearly prohibited by that statute.[14]

This Court has termed a "lodestar of adjudication" the principle that proper consideration for state judicial systems in the construction and application of the Civil Rights Act, while vital when attempts to stop the commencement of state judicial proceedings come before the federal courts, is much "more cogent . . . to prevent federal interference with proceedings once begun." **Stefanelli v. Minard**, 342 U. S. 117, 121 and 122-123.[15] Section 2283

[14] "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Petitioners do not suggest that any statutory exceptions exist when they seek to enjoin pending state private libel actions.

[15] When the 7th Circuit decided, *Progress Development Corp. v. Mitchell*, 286 F. 2d 222, it recognized this crucial distinction and emphasized that the jurisdiction of the federal courts was there invoked first by the plaintiffs. Petitioners may not approve of the principle (p. 10), but it is nevertheless well embedded.

represents the strongest expression of the traditional reluctance of a federal court to interfere in state court proceedings, and by it, "Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation." **Amalgamated Clothing Workers v. Richman Brothers**, 348 U. S. 511, 514.[16]

This Court in **Leiter Minerals, Inc., v. U. S.**, 352 U. S. 220, 225-226, characterized this statute as "designed to prevent conflict between federal and state courts." During its last term this Court would not permit federal interference by injunction in state criminal proceedings. **Pugach v. Dollinger**, 365 U. S. 458, and **Wilson v. Schnettler**, 365 U. S. 381, 385.[17] Nor would it this term in **Bailey v. Patterson**, 30 U. S. L. Week 3201.

Many earlier decisions, culminating in **Toucey v. New York Life Insurance Co.**, 314 U. S. 118, stand undeviatingly for these principles now embodied in legislation. Among them are **Oklahoma Packing Co. v. Oklahoma Gas and Electric Co.**, 309 U. S. 4, 8-9; **American Surety Co. v. Baldwin**, 287 U. S. 156; **Kline v. Burke Construction Co.**, 260 U. S. 226; and **Hill v. Martin**, 296 U. S. 393.

Moreover, no exception to this statute and its underlying considerations exists simply because a federal injunction is sought under the Civil Rights Act. See **Bailey v. Patterson**, 30 U. S. L. Week 3201; **Stefanelli v. Minard**, 342 U. S. 117; **Pugach v. Dollinger**, 365 U. S. 458; **Wilson**

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[16] There this Court, though assuming "that the conduct in controversy is subject to whatever relief the Taft-Hartley Act may afford and therefore is outside state authority" (348 U. S. at 514), nevertheless refused to allow a federal injunction against a state court action in a labor matter, and held that such federal interference was prohibited by Title 28, § 2283 as "continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflict between state and federal courts" (348 U. S. at 518).

[17] "We live in the jurisdiction of two sovereignties. Each has its own system of courts to interpret and enforce its laws, although in common territory. These courts could not perform their respective functions without embarrassing conflicts unless rules were adopted to avoid them."

v. Schnettler, 365 U. S. 381; and **Amalgamated Clothing Workers v. Richman Brothers,** 348 U. S. 511.[18] Congress in varied contexts has shown that when it grants federal courts the power to stay state court proceedings, it knows how to do so expressly.[19] The courts below knew that the relief which petitioners sought would have required an injunction in the very teeth of § 2283 to restrain and review private litigation pending in the state courts of Alabama.

3. Quite apart from the anti-injunction prohibition, petitioners seek federal interference in private libel litigation under the guise of the Civil Rights Acts. It is elemental that private action is outside the scope of these acts. **Collins v. Hardyman,** 341 U. S. 651; **U. S. v. Cruikshank,** 92 U. S. 542. And Courts of Appeals have uniformly rejected the claims of disappointed state litigants who want to retry state civil actions on federal allegations of conspiracy and fraud.[20]

Even if this complaint had not sought an injunction against pending state court proceedings, it stated no cause of action under the Civil Rights Act when it complained of the outcome of a private state libel suit for damages.

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[18] The absence of any such exception has been clearly spelled out by lower federal courts. See e. g. *Sexton v. Barry,* 233 F. 2d 220 (6th Cir. 1956); *Smith v. Village of Lansing,* 241 F. 2d 856 (7th Cir. 1957); *Aultman & Taylor Co. v. Brumfield,* 102 Fed. 7 (N. D. Ohio 1900); *Island Steamship Lines v. Glennon,* 178 F. Supp. 202 (D. Mass. 1959).

[19] See e. g. Interpleader (28 U. S. C. 2361); Habeas Corpus (28 U. S. C. 2251); Bankruptcy (11 U. S. C. 29); Frazier-Lemke Farm Mortgage Act (11 U. S. C. 203) (s) (2).

[20] *Hanna v. Home Insurance Co.,* 281 F. 2d 298 (5th Cir. 1960); *Curry v. Ragan,* 257 F. 2d 449 (5th Cir. 1958); *Lyons v. Dehon,* 188 F. 2d 534 (5th Cir. 1951); *Bottone v. Lindsley,* 170 F. 2d 705 (10th Cir. 1948); *Campo v. Niemeyer,* 182 F. 2d 115 (7th Cir. 1950); *Moffett v. Commerce Trust Co.,* 187 F. 2d 242 (8th Cir. 1951); *Sexton v. Barry,* 233 F. 2d 220 (6th Cir. 1956); *H. J. Heinz v. Owens,* 180 F. 2d 505 (9th Cir. 1951).

While without significance on the merits of the foregoing cases, it is perhaps worth noting that this Court denied certiorari in each case in which review was sought here.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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I, M. Roland Nachman, Jr., of Counsel for Respondents and a member of the bar of this Court, hereby certify that I have mailed copies of the above and foregoing Brief, Air Mail, postage prepaid, addressed to Messrs. Cotton, Fruchtman and Watt, 105 West Adams Street, Chicago 4, Illinois, and regular mail to Charles S. Conley, Esq., 530 South Union Street, Montgomery, Alabama, as Counsel for Petitioners.

This ..... day of January, 1962.

.....

M. Roland Nachman, Jr.,
Of Counsel for Respondents.

APPENDIX A.

Title 7, § 276, Code of Alabama of 1940, as amended, which provides:

"Sec. 276: New trial, causes for.—On motion filed within thirty days from entry of judgment a new trial may be granted in the following causes:

"Irregularity in the proceedings of the court, jury, or prevailing party, or any order of court, or abuse of discretion, by which the party was prevented from having a fair trial.

"Misconduct of the jury or prevailing party.

"Accident or surprise, which ordinary prudence could not have guarded against.

"Excessive or inadequate damages.

"Error in the assignment of the amount of recovery, whether too large or too small where the action is upon a contract or for the injury or detention of property.

"That the verdict or decision is not sustained by the great preponderance of the evidence, or is contrary to law.

"Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

"Error of law occurring at the trial and excepted to by the party making the application. And the court, in granting new trials, may allow the same at the costs of the party applying therefor, or in the costs abiding the event of the suit, or a portion of the costs, as the justice and equity of the case may require, taking into consideration the causes which may make such new trial necessary."

Title 7, § 792, Code of Alabama of 1940, as amended, which provides:

"Sec. 792. Security for costs; when required.—An appeal may be taken without giving bond to supersede the execution of the judgment or decree, by the appellant giving security for costs of such appeal, to be approved by the clerk, register, or judge of probate; the names of the surety or sureties to be certified with the record to the appellate court; and execution may issue against such sureties for the costs in such court and the costs of the transcript, if decided against the appellant."

Title 7, § 793, Code of Alabama of 1940, as amended, which provides:

"Sec. 793. Supersedeas bond in general.—When the judgment or decree is for the payment of money only, the appeal does not operate as a supersedeas, or to stay or suspend the execution of such judgment or decree (except in such cases as are otherwise provided), unless bond be given by the appellant, or some other person, in double the amount of the judgment or decree, including costs, payable to the appellee, with sufficient sureties, and with condition to prosecute the appeal to effect, or, if he fails therein, to satisfy such judgment as the appellate court may render in the premises."

Title 7, § 794, Code of Alabama of 1940, as amended, which provides:

"Sec. 794. Supersedeas bond, when judgment or decree for payment of money, and for other acts.—If the decree or judgment be for the payment of money, and also for the performance of some other act or duty, or for the recovery of property, real or personal, or the possession thereof, or for the sale of property, real or personal, and the party appealing wishes to supersede the execution of such judgment or decree,

he must, unless otherwise provided, give bond with good and sufficient sureties, payable to the party recovering the judgment or decree, in double the amount of the money, with condition to prosecute to effect the appeal, or, if he fails therein, to pay such judgment as the appellate court may render in the premises, and must also execute bond with good and sufficient sureties, payable to the clerk or register, in such sum as the judge may in writing prescribe, with condition to pay all such costs and damages as any party aggrieved may sustain by reason of the wrongful appeal and suspension of the execution of the judgment or decree; or if the party appealing wishes to supersede the judgment or decree as to the payment of the money only, the bond first above mentioned may be executed, suspending the judgment or decree in that respect only; or if the party appealing wishes to supersede the execution of the judgment or decree in the other respect only, the bond secondly above mentioned may be executed, superseding the execution of the judgment or decree in that respect only."